

# HOUSE . . . . . No. 4330

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, July 30, 2025.

The committee on The Judiciary, to whom was referred the petition (accompanied by bill, House, No. 1856) of Jay D. Livingstone relative to the distribution of property and the modification of the terms of trusts, reports recommending that the accompanying bill (House, No. 4330) ought to pass.

For the committee,

MICHAEL S. DAY.

**HOUSE . . . . . No. 4330**

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**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Fourth General Court  
(2025-2026)**

An Act relative to the Massachusetts Uniform Trust Decanting Act.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 203E of the General Laws is hereby amended by striking out  
2 Section 103, as appearing in the 2022 Official Edition, and inserting in place thereof the  
3 following section:-

4           Section 103. Definitions.

5           In this chapter the following words shall, unless the context clearly requires otherwise,  
6 have the following meanings:-

7           “Action”, with respect to an act of a trustee, includes a failure to act.

8           “Ascertainable standard”, a standard relating to an individual’s health, education, support  
9 or maintenance.

10          “Beneficiary”, a person who (i) has a present or future beneficial interest in a trust, vested  
11 or contingent; (ii) holds a power of appointment over a trust property; or (iii) is an identifiable  
12 charitable organization that will or may receive distributions under the terms of the trust.

13           “Charitable trust”, a trust, or portion of a trust, created for a charitable purpose described  
14 in subsection (a) of section 405.

15           “Environmental law”, a federal, state or local law, rule, regulation or ordinance relating  
16 to protection of the environment.

17           “Interests of the beneficiaries”, the beneficial interests provided in the terms of the trust.

18           “Jurisdiction”, a geographic area, including a state or country.

19           “Person”, an individual, corporation, business trust, estate, trust, partnership, limited  
20 liability company, association, joint venture, government, governmental subdivision, agency or  
21 instrumentality, public corporation or any other legal or commercial entity.

22           “Property”, anything that may be the subject of ownership, whether real, personal, legal,  
23 equitable or any interest therein.

24           “Qualified beneficiary”, a beneficiary who, on the date the beneficiary’s qualification is  
25 determined: (i) is a distributee or permissible distributee of trust income or principal; (ii) would  
26 be a distributee or permissible distributee of trust income or principal if the interests of the  
27 distributees described in clause (i) terminated on that date without causing the trust to terminate;  
28 or (iii) would be a distributee or permissible distributee of trust income or principal if the trust  
29 terminated on that date.

30           “Revocable”, a trust that is revocable by the settlor without the consent of the trustee or a  
31 person holding an adverse interest.

32           “Settlor”, except as otherwise provided in section 925, a person, including a testator, who  
33 creates or contributes property to a trust. If more than one person creates or contributes property

34 to a trust, each person is a settlor of the portion of the trust property attributable to that person's  
35 contribution except to the extent another person has the power to revoke or withdraw that  
36 portion.

37 "Spendthrift provision", a term of a trust which restrains transfer of a beneficiary's  
38 interest.

39 "State", a state of the United States, the District of Columbia, Puerto Rico, the United  
40 States Virgin Islands or any territory or insular possession subject to the jurisdiction of the  
41 United States, including an Indian tribe or band recognized by federal law or formally  
42 acknowledged by a state.

43 "Terms of a trust", (i) the manifestation of the settlor's intent regarding a trust's  
44 provisions as expressed in the trust instrument or established by other evidence that would be  
45 admissible in a judicial proceeding; or (ii) the trust's provisions as established, determined, or  
46 amended by a trustee or other person in accordance with applicable law, a court order, or a non-  
47 judicial settlement agreement under section 111.

48 "Trust instrument", a record executed by the settler to create a trust which contains some  
49 or all the terms of the trust, including any amendments. A "trust instrument" under sections 901  
50 through 927 includes a record executed by any person to create a second trust which contains  
51 some or all the terms of the trust, including any amendments.

52 "Trustee", an original, additional or successor trustee or a co-trustee.

53 SECTION 2. Subsection (b) of section 110 of said chapter 203E, as so appearing, is  
54 hereby amended by striking out paragraph (2), and inserting in place thereof the following 2  
55 paragraphs:-

56 (2) would be a distributee or permissible distributee of trust income or principal upon the  
57 termination of the interests of other distributees or permissible distributees then receiving or  
58 eligible to receive distributions; or

59 (3) would be a distributee or permissible distributee of trust income or principal if the  
60 trust terminated on that date.

61 SECTION 3. Said Chapter 203E is hereby further amended by inserting after Article 8  
62 the following article:-

63 ARTICLE 9

64 MASSACHUSETTS UNIFORM TRUST DECANTING ACT

65 Section 901. Short title

66 This article shall be known and may be cited as the Massachusetts Uniform Trust  
67 Decanting Act.

68 Section 902. Definitions

69 In this article the following words shall, unless the context clearly requires otherwise,  
70 have the following meanings:-

71 “Appointive property”, the property or property interest subject to a power of  
72 appointment.

73 “Authorized fiduciary”: (i) a trustee or other fiduciary, other than a settlor, that has  
74 discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust  
75 to one or more current beneficiaries; (ii) a special fiduciary appointed under section 909; or (iii) a  
76 special-needs fiduciary under section 913.

77 “Charitable interest”, an interest in a trust which: (i) is held by an identified charitable  
78 organization and makes the organization a qualified beneficiary; (ii) benefits only charitable  
79 organizations and, if the interest were held by an identified charitable organization, would make  
80 the organization a qualified beneficiary; or (iii) is held solely for charitable purposes and, if the  
81 interest were held by an identified charitable organization, would make the organization a  
82 qualified beneficiary.

83 “Charitable purpose”, the relief of poverty, the advancement of education or religion, the  
84 promotion of health, governmental or municipal purposes or other purposes which are beneficial  
85 to the community.

86 “Current beneficiary”, a beneficiary who, on the date the beneficiary’s qualification is  
87 determined, is a distributee or permissible distributee of trust income or principal including the  
88 holder of a presently exercisable general power of appointment but not including a person that is  
89 a beneficiary only because the person holds any other power of appointment.

90 “Decanting power”, the power of an authorized fiduciary under this article to distribute  
91 property of a first trust to one or more second trusts or to modify the terms of the first trust.

92 “Expanded distributive discretion”, a discretionary power of distribution that is not  
93 limited to an ascertainable standard or a reasonably definite standard.

94 “First trust”, a trust over which an authorized fiduciary may exercise the decanting  
95 power.

96 “First-trust instrument”, the trust instrument for a first trust.

97 “General power of appointment”, a power of appointment exercisable in favor of a  
98 powerholder, the powerholder’s estate, a creditor of the powerholder, or a creditor of the  
99 powerholder’s estate.

100 “Power of appointment”, a power that enables a powerholder acting in a nonfiduciary  
101 capacity to designate a recipient of an ownership interest in or another power of appointment  
102 over the appointive property but does not include a power of attorney.

103 “Powerholder”, a person in which a donor creates a power of appointment.

104 “Presently exercisable power of appointment”, a power of appointment exercisable by the  
105 powerholder at the relevant time including a power of appointment exercisable only after the  
106 occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a  
107 specified time only after the occurrence of the specified event, the satisfaction of the  
108 ascertainable standard, or the passage of the specified time but does not include a power  
109 exercisable only at the powerholder’s death.

110 “Reasonably definite standard” means a clearly measurable standard under which a  
111 holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. Section  
112 674(b)(5)(A) and any applicable regulations.

113 “Record” means information that is inscribed on a tangible medium or that is stored in an  
114 electronic or other medium and is retrievable in perceivable form.

115 “Second trust”, a first trust after modification under this article or a trust to which a  
116 distribution of property from a first trust is or may be made under this article.

117 “Second-trust instrument”, the trust instrument for a second trust.

118 “Sign” means, with present intent to authenticate or adopt a record to execute or adopt a  
119 tangible symbol or to attach to or logically associate with the record an electronic symbol, sound,  
120 or process.

### 121 Section 903. Scope

122 (a) Except as otherwise provided in subsections (b) and (c), this article applies to an  
123 express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or  
124 a person holding an adverse interest.

125 (b) This article does not apply to a trust held solely for charitable purposes.

126 (c) Subject to section 915, a trust instrument may restrict or prohibit exercise of the  
127 decanting power.

128 (d) This article does not limit the power of a trustee, powerholder, or other person to  
129 distribute or appoint property in further trust or to modify a trust under the trust instrument, law  
130 of the commonwealth other than this article, common law, a court order, or a non-judicial  
131 settlement agreement.

132 (e) This article does not affect the ability of a settlor to provide in a trust instrument for  
133 the distribution of the trust property or appointment in further trust of the trust property or for  
134 modification of the trust instrument.

135 Section 904. Fiduciary duty

136 (a) In exercising the decanting power, an authorized fiduciary shall act in accordance  
137 with its fiduciary duties, including the duty to act in accordance with the purposes of the first  
138 trust.

139 (b) This article does not create or imply a duty to exercise the decanting power or to  
140 inform beneficiaries about the applicability of this article.

141 (c) Except as otherwise provided in a first-trust instrument, for purposes of this article  
142 and sections 801 and 802(a), the terms of the first trust are deemed to include the decanting  
143 power.

144 Section 905. Application; governing law

145 This article applies to a trust created before, on, or after the effective date of this article  
146 which has its principal place of administration in the commonwealth or provides by its trust  
147 instrument that its administration and interpretation is governed by the laws of the  
148 commonwealth.

149 Section 906. Reasonable reliance

150 A trustee or other person that reasonably relies on the validity of a distribution of part or  
151 all of the property of a trust to another trust, or a modification of a trust, under this article, a law  
152 of the commonwealth other than this article; or the law of another jurisdiction is not liable to any  
153 person for any action or failure to act as a result of the reliance.

154 Section 907. Notice; exercise of decanting power

155 (a) In this section, a notice period begins on the day notice is given under subsection (c)  
156 and ends 59 days after the day notice is given.

157 (b) Except as otherwise provided in this article, an authorized fiduciary may exercise the  
158 decanting power without the consent of any person and without court approval.

159 (c) Except as otherwise provided in subsection (f), an authorized fiduciary shall give  
160 notice in a record of the intended exercise of the decanting power not later than 60 days before  
161 the exercise to:

162 (1) each settlor of the first trust, if living or then in existence;

163 (2) each qualified beneficiary of the first trust;

164 (3) each holder of a presently exercisable power of appointment over any part or all of the  
165 first trust;

166 (4) each person that currently has the right to remove or replace the authorized fiduciary;

167 (5) each other fiduciary of the first trust;

168 (6) each fiduciary of the second trust; and

169 (7) the attorney general if subsection (b) of section 914 applies.

170 (d) An authorized fiduciary is not required to give notice under subsection (c) to a person  
171 that is not known to the fiduciary or is known to the fiduciary but cannot be located by the  
172 fiduciary after reasonable diligence.

173 (e) A notice under subsection (c) must:

174 (1) specify the manner in which the authorized fiduciary intends to exercise the decanting  
175 power;

176 (2) specify the proposed effective date for exercise of the power;

177 (3) include a copy of the first-trust instrument; and

178 (4) include a copy of all second-trust instruments.

179 (f) The decanting power may be exercised before expiration of the notice period under  
180 subsection (a) if all persons entitled to receive notice waive the period in a signed record.

181 (g) The receipt of notice, waiver of the notice period, or expiration of the notice period  
182 does not affect the right of a person to file an application under section 909 asserting that:

183 (1) an attempted exercise of the decanting power is ineffective because it did not comply  
184 with this article or was an abuse of discretion or breach of fiduciary duty; or

185 (2) section 922 applies to the exercise of the decanting power.

186 (h) An exercise of the decanting power is not ineffective because of the failure to give  
187 notice to one or more persons under subsection (c) if the authorized fiduciary acted with  
188 reasonable care to comply with subsection (c).

189 Section 908. [Reserved]

190 Section 909. Court involvement

191 (a) On application of an authorized fiduciary, a person entitled to notice under subsection  
192 (c) of section 907, a beneficiary, or with respect to a charitable interest the attorney general, or  
193 other person that has standing to enforce the charitable interest, the court may:

194 (1) provide instructions to the authorized fiduciary regarding whether a proposed exercise  
195 of the decanting power is permitted under this article and consistent with the fiduciary duties of  
196 the authorized fiduciary;

197 (2) appoint a special fiduciary and authorize the special fiduciary to determine whether  
198 the decanting power should be exercised under this article and to exercise the decanting power;

199 (3) approve an exercise of the decanting power;

200 (4) determine that a proposed or attempted exercise of the decanting power is ineffective  
201 because:

202 (i) after applying section 922, the proposed or attempted exercise does not or did not  
203 comply with this article; or

204 (ii) the proposed or attempted exercise would be or was an abuse of the fiduciary's  
205 discretion or a breach of fiduciary duty;

206 (5) determine the extent to which section 922 applies to a prior exercise of the decanting  
207 power;

208 (6) provide instructions to the trustee regarding the application of section 922 to a prior  
209 exercise of the decanting power; or

210 (7) order other relief to carry out the purposes of this article.

- 211 (b) On application of an authorized fiduciary, the court may approve:
- 212 (1) an increase in the fiduciary’s compensation under section 916;
- 213 (2) a modification of fiduciary liability under section 917; or
- 214 (3) a modification under section 918 of a provision granting a person the right to remove
- 215 or replace the fiduciary.

216 Section 910. Formalities

217 An exercise of the decanting power must be made in a record signed by an authorized

218 fiduciary. The signed record must, directly or by reference to the notice required by section 907,

219 identify the first trust and the second trust or trusts and state the property of the first trust being

220 distributed to each second trust and the property, if any, that remains in the first trust.

221 Section 911. Decanting power under expanded distributive discretion

222 (a) In this section:

223 (1) “Noncontingent right” means a right that is not subject to the exercise of discretion or

224 the occurrence of a specified event that is not certain to occur. The term does not include a right

225 held by a beneficiary if any person has discretion to distribute property subject to the right to any

226 person other than the beneficiary or the beneficiary’s estate.

227 (2) “Presumptive remainder beneficiary” means a qualified beneficiary other than a

228 current beneficiary.

229 (3) “Successor beneficiary” means a beneficiary who is not a qualified beneficiary on the

230 date the beneficiary’s qualification is determined.

231 (4) “Vested interest” means:

232 (i) a right to a mandatory distribution that is a noncontingent right as of the date of the  
233 exercise of the decanting power;

234 (ii) a current and noncontingent right, annually or more frequently, to a mandatory  
235 distribution of income, a specified dollar amount, or a percentage of value of some or all of the  
236 trust property;

237 (iii) a current and noncontingent right, annually or more frequently, to withdraw income,  
238 a specified dollar amount, or a percentage of value of some or all of the trust property;

239 (iv) a presently exercisable general power of appointment; or

240 (v) a right to receive an ascertainable part of the trust property on the trust’s termination  
241 which is not subject to the exercise of discretion or to the occurrence of a specified event that is  
242 not certain to occur.

243 (b) Subject to subsection (c) and section 914, an authorized fiduciary who has expanded  
244 distributive discretion over the principal of a first trust for the benefit of one or more current  
245 beneficiaries may exercise the decanting power over the principal of the first trust.

246 (c) Subject to section 913, in an exercise of the decanting power under this section, a  
247 second trust may not:

248 (1) include as a current beneficiary a person who is not a current beneficiary of the first  
249 trust or include as a current beneficiary with respect to trust principal a person who is a current  
250 beneficiary of the first trust only with respect to trust income, except as otherwise provided in  
251 subsection (d);

252 (2) include as a presumptive remainder beneficiary or successor beneficiary a person who  
253 is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the  
254 first trust, except as otherwise provided in subsection (d); or

255 (3) reduce or eliminate a vested interest.

256 (d) Subject to subsection (c)(3) and section 914, in an exercise of the decanting power  
257 under this section, a second trust may be a trust created or administered under the law of any  
258 jurisdiction and may:

259 (1) retain a power of appointment granted in the first trust;

260 (2) omit a power of appointment granted in the first trust, other than a presently  
261 exercisable general power of appointment;

262 (3) create or modify a power of appointment if the powerholder is a current beneficiary of  
263 the first trust and the authorized fiduciary has expanded distributive discretion to distribute  
264 principal to the beneficiary; and

265 (4) create or modify a power of appointment if the powerholder is a presumptive  
266 remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power  
267 may take effect only after the powerholder becomes, or would have become if then living, a  
268 current beneficiary.

269 (e) A power of appointment described in subsection (d)(1) through (4) may be general or  
270 nongeneral. The class of permissible appointees in favor of which the power may be exercised  
271 may be broader than or different from the beneficiaries of the first trust.

272 (f) If an authorized fiduciary has expanded distributive discretion over part but not all of  
273 the principal of a first trust, the fiduciary may exercise the decanting power under this section  
274 over that part of the principal over which the authorized fiduciary has expanded distributive  
275 discretion.

276 Section 912. Decanting power under limited distributive discretion

277 (a) In this section, “limited distributive discretion” means a discretionary power of  
278 distribution that is limited to an ascertainable standard or a reasonably definite standard.

279 (b) An authorized fiduciary who has limited distributive discretion over the principal of  
280 the first trust for the benefit of one or more current beneficiaries may exercise the decanting  
281 power over the principal of the first trust.

282 (c) Under this section and subject to section 914, a second trust may be created or  
283 administered under the law of any jurisdiction. Under this section, the second trusts, in the  
284 aggregate, must grant each beneficiary of the first trust beneficial interests which are  
285 substantially similar to the beneficial interests of the beneficiary in the first trust.

286 (d) A power to make a distribution under a second trust for the benefit of a beneficiary  
287 who is an individual is substantially similar to a power under the first trust to make a distribution  
288 directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

289 (1) the distribution is applied for the benefit of the beneficiary;

290 (2) the beneficiary is under a legal disability or the trustee reasonably believes the  
291 beneficiary is incapacitated, and the distribution is made as permitted under this chapter; or

292 (3) the distribution is made as permitted under the terms of the first-trust instrument and  
293 the second-trust instrument for the benefit of the beneficiary.

294 (e) If an authorized fiduciary has limited distributive discretion over part but not all of the  
295 principal of a first trust, the fiduciary may exercise the decanting power under this section over  
296 that part of the principal over which the authorized fiduciary has limited distributive discretion.

297 Section 913. Trust for beneficiary with disability

298 (a) In this section:

299 (1) “Beneficiary with a disability” means a beneficiary of a first trust who the special-  
300 needs fiduciary believes may qualify for governmental benefits based on disability, regardless of  
301 whether the beneficiary currently receives those benefits or is an individual who has been  
302 adjudicated a disabled or incapacitated person.

303 (2) “Governmental benefits” means financial aid or services from a state, federal, or other  
304 public agency.

305 (3) “Special-needs fiduciary” means, with respect to a trust that has a beneficiary with a  
306 disability:

307 (i) a trustee or other fiduciary, other than a settlor, who has discretion to distribute part or  
308 all of the principal of a first trust to one or more current beneficiaries;

309 (ii) if no trustee or fiduciary has discretion under clause (i), a trustee or other fiduciary,  
310 other than a settlor, who has discretion to distribute part or all of the income of the first trust to  
311 one or more current beneficiaries; or

312 (iii) if no trustee or fiduciary has discretion under clauses (i) and (ii), a trustee or other  
313 fiduciary, other than a settlor, who is required to distribute part or all of the income or principal  
314 of the first trust to one or more current beneficiaries.

315 (4) “Special-needs trust” means a trust the trustee believes would not be considered a  
316 resource for purposes of determining whether a beneficiary with a disability is eligible for any  
317 governmental benefit.

318 (b) A special-needs fiduciary may exercise the decanting power under section 911 over  
319 the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary  
320 with a disability subject to expanded distributive discretion if:

321 (1) a second trust is a special-needs trust that benefits the beneficiary with a disability;  
322 and

323 (2) the special-needs fiduciary determines that exercise of the decanting power will  
324 further the purposes of the first trust.

325 (c) In an exercise of the decanting power under this section, the following rules apply:

326 (1) Notwithstanding subsection (c)(2) of section 911, the interest in the second trust of a  
327 beneficiary with a disability may:

328 (i) be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a  
329 disability under 42 U.S.C. section 1396p(d)(4)(C); or

330 (ii) contain payback provisions complying with reimbursement requirements of Medicaid  
331 law under 42 U.S.C. section 1396p(d)(4)(A).

332 (iii) Subsection (c)(3) of section 911 does not apply to the interests of the beneficiary  
333 with a disability.

334 (3) Except as affected by any change to the interests of the beneficiary with a disability,  
335 the second trust, or if there are two or more second trusts, the second trusts in the aggregate,  
336 must grant each other beneficiary of the first trust beneficial interests in the second trusts which  
337 are substantially similar to the beneficiary's beneficial interests in the first trust.

338 Section 914. Protection of charitable interest

339 (a) In this section:

340 (1) "Determinable charitable interest" means a charitable interest that is a right to a  
341 mandatory distribution currently, periodically, on the occurrence of a specified event, or after the  
342 passage of a specified time and which is unconditional or will be held solely for charitable  
343 purposes.

344 (2) "Unconditional" means not subject to the occurrence of a specified event that is not  
345 certain to occur, other than a requirement in a trust instrument that a charitable organization be in  
346 existence or qualify under a particular provision of the Internal Revenue Code of the United  
347 States on the date of the distribution, if the charitable organization meets the requirement on the  
348 date of determination.

349 (b) If a first trust contains a determinable charitable interest, the attorney general has the  
350 rights of a qualified beneficiary and may represent and bind the charitable interest.

351 (c) If a first trust contains a charitable interest, the second trust or trusts may not: (1)  
352 diminish the charitable interest; (2) diminish the interest of an identified charitable organization

353 that holds the charitable interest; (3) alter any charitable purpose stated in the first-trust  
354 instrument; or (4) alter any condition or restriction related to the charitable interest.

355 (d) If there are two or more second trusts, the second trusts shall be treated as one trust  
356 for purposes of determining whether the exercise of the decanting power diminishes the  
357 charitable interest or diminishes the interest of an identified charitable organization for purposes  
358 of subsection (c).

359 (e) If a first trust contains a determinable charitable interest, the second trust or trusts that  
360 include a charitable interest pursuant to subsection (c) must be administered under the law of the  
361 commonwealth unless: (1) the attorney general, after receiving notice under section 907, fails to  
362 object in a signed record delivered to the authorized fiduciary within the notice period; (2) the  
363 attorney general consents in a signed record to the second trust or trusts being administered  
364 under the law of another jurisdiction; or (3) the court approves the exercise of the decanting  
365 power.

366 (f) This article does not limit the powers and duties of the attorney general under law of  
367 the commonwealth other than this article.

368 Section 915. Trust limitation on decanting

369 (a) An authorized fiduciary may not exercise the decanting power to the extent the first-  
370 trust instrument expressly prohibits exercise of:

371 (1) the decanting power; or

372 (2) a power granted by state law to the fiduciary to distribute part or all of the principal of  
373 the trust to another trust or to modify the trust.

374 (b) Exercise of the decanting power is subject to any restriction in the first-trust  
375 instrument that expressly applies to exercise of:

376 (1) the decanting power; or

377 (2) a power granted by state law to a fiduciary to distribute part or all of the principal of  
378 the trust to another trust or to modify the trust.

379 (c) A general prohibition of the amendment or revocation of a first trust, a spendthrift  
380 clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest  
381 does not preclude exercise of the decanting power.

382 (d) Subject to subsections (a) and (b), an authorized fiduciary may exercise the decanting  
383 power under this article even if the first-trust instrument permits the authorized fiduciary or  
384 another person to modify the first-trust instrument or to distribute part or all of the principal of  
385 the first trust to another trust.

386 (e) If a first-trust instrument contains an express prohibition described in subsection (a) or  
387 an express restriction described in subsection (b), the provision must be included in the second-  
388 trust instrument.

389 Section 916. Change in compensation

390 (a) If a first-trust instrument specifies an authorized fiduciary's compensation, the  
391 fiduciary may not exercise the decanting power to increase the fiduciary's compensation above  
392 the specified compensation unless:

393 (1) all qualified beneficiaries of the second trust consent to the increase in a signed  
394 record; or

395 (2) the increase is approved by the court.

396 (b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the  
397 fiduciary may not exercise the decanting power to increase the fiduciary's compensation above  
398 the compensation permitted by this chapter unless:

399 (1) all qualified beneficiaries of the second trust consent to the increase in a signed  
400 record; or

401 (2) the increase is approved by the court.

402 (c) A change in an authorized fiduciary's compensation which is incidental to other  
403 changes made by the exercise of the decanting power is not an increase in the fiduciary's  
404 compensation for purposes of subsections (a) and (b).

405 Section 917. Relief from liability and indemnification

406 (a) Except as otherwise provided in this section or permitted under article 10, a second-  
407 trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a  
408 greater extent than the first-trust instrument.

409 (b) A second-trust instrument may provide for indemnification of an authorized fiduciary  
410 of the first trust or another person acting in a fiduciary capacity under the first trust for any  
411 liability or claim that would have been payable from the first trust if the decanting power had not  
412 been exercised.

413 (c) Unless permitted under article 10, a second-trust instrument may not reduce fiduciary  
414 liability in the aggregate.

415 (d) Subject to subsection (c), a second-trust instrument may divide and reallocate  
416 fiduciary powers among fiduciaries, including one or more trustees, distribution advisors,  
417 investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for  
418 an act or failure to act of another fiduciary as permitted by law of the commonwealth other than  
419 this article.

420 Section 918. Removal or replacement of authorized fiduciary

421 An authorized fiduciary may not exercise the decanting power to modify a provision in a  
422 first-trust instrument granting another person power to remove or replace the fiduciary unless:

423 (a) the person holding the power consents to the modification in a signed record and the  
424 modification applies only to the person;

425 (b) the person holding the power and the qualified beneficiaries of the second trust  
426 consent to the modification in a signed record and the modification grants a substantially similar  
427 power to another person; or

428 (c) the court approves the modification, and the modification grants a substantially  
429 similar power to another person.

430 Section 919. Tax-related limitations

431 (a) In this section:

432 (1) "Grantor trust" means a trust as to which a settlor of a first trust is considered the  
433 owner under 26 U.S.C. sections 671 through 677 or 26 U.S.C. section 679.

434 (2) “Internal Revenue Code” means the Internal Revenue Code of the United States, as  
435 amended.

436 (3) “Nongrantor trust” means a trust that is not a grantor trust.

437 (4) “Qualified benefits property” means property subject to the minimum distribution  
438 requirements of 26 U.S.C. section 401(a)(9), and any applicable regulations, or to any similar  
439 requirements that refer thereto.

440 (b) An exercise of the decanting power is subject to the following limitations:

441 (1) If a first trust contains property that qualified, or would have qualified but for  
442 provisions of this article other than this section, for a marital deduction for purposes of the gift or  
443 estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-  
444 trust instrument must not include or omit any term that, if included in or omitted from the trust  
445 instrument for the trust to which the property was transferred, would have prevented the transfer  
446 from qualifying for the deduction, or would have reduced the amount of the deduction, under the  
447 same provisions of the Internal Revenue Code or state law under which the transfer qualified.

448 (2) If the first trust contains property that qualified, or would have qualified but for  
449 provisions of this article other than this section, for a charitable deduction for purposes of the  
450 income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or  
451 inheritance tax, the second-trust instrument must not include or omit any term that, if included in  
452 or omitted from the trust instrument for the trust to which the property was transferred, would  
453 have prevented the transfer from qualifying for the deduction, or would have reduced the amount  
454 of the deduction, under the same provisions of the Internal Revenue Code or state law under  
455 which the transfer qualified.

456 (3) If the first trust contains property that qualified, or would have qualified but for  
457 provisions of this article other than this section, for the exclusion from the gift tax described in  
458 26 U.S.C. section 2503(b), the second-trust instrument must not include or omit a term that, if  
459 included in or omitted from the trust instrument for the trust to which the property was  
460 transferred, would have prevented the transfer from qualifying under such section. If the first  
461 trust contains property that qualified, or would have qualified but for provisions of this article  
462 other than this section, for the exclusion from the gift tax described in 26 U.S.C. section 2503(b)  
463 by application of 26 U.S.C. section 2503(c), the second-trust instrument must not include or omit  
464 a term that, if included or omitted from the trust instrument for the trust to which the property  
465 was transferred, would have prevented the transfer from qualifying under 26 U.S.C. section  
466 2503(c)..

467 (4) If the property of the first trust includes shares of stock in an S corporation, as defined  
468 in 26 U.S.C. section 1361 and the first trust is, or but for provisions of this article other than this  
469 section would be, a permitted shareholder under any provision of 26 U.S.C. section 1361, an  
470 authorized fiduciary may exercise the power with respect to part or all of the S corporation stock  
471 only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. section  
472 1361(c)(2) . If the property of the first trust includes shares of stock in an S corporation and the  
473 first trust is, or but for provisions of this article other than this section would be, a qualified  
474 subchapter S trust within the meaning of 26 U.S.C. section 1361(d), the second-trust instrument  
475 must not include or omit a term that prevents the second trust from qualifying as a qualified  
476 subchapter S trust.

477 (5) If the first trust contains property that qualified, or would have qualified but for  
478 provisions of this article other than this section, for a zero inclusion ratio for purposes of the

479 generation-skipping transfer tax under 26 U.S.C. section 2642(c), the second-trust instrument  
480 must not include or omit a term that, if included in or omitted from the first-trust instrument,  
481 would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio  
482 under such section.

483 (6) If the first trust is directly or indirectly the beneficiary of qualified benefits property,  
484 the second-trust instrument may not include or omit any term that, if included in or omitted from  
485 the first-trust instrument, would have increased the minimum distributions required with respect  
486 to the qualified benefits property under 26 U.S.C. section 401(a)(9) and any applicable  
487 regulations, or any similar requirements that refer thereto. If an attempted exercise of the  
488 decanting power violates the preceding sentence, the trustee is deemed to have held the qualified  
489 benefits property and any reinvested distributions of the property as a separate share from the  
490 date of the exercise of the power and section 922 applies to the separate share.

491 (7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C.  
492 section 672(f)(2)(A), the second trust may not include or omit a term that, if included in or  
493 omitted from the first-trust instrument, would have prevented the first trust from qualifying under  
494 such section.

495 (8) In this subsection, “tax benefit” means a federal or state tax deduction, exemption,  
496 exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from  
497 being a grantor trust. Subject to paragraph (9), a second-trust instrument may not include or omit  
498 a term that, if included in or omitted from the first-trust instrument, would have prevented  
499 qualification for a tax benefit if:

500 (A) the first-trust instrument expressly indicates an intent to qualify for the benefit or the  
501 first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

502 (B) the transfer of property held by the first trust or the first trust qualified, or but for  
503 provisions of this article other than this section, would have qualified for the tax benefit.

504 (9) Subject to subsection (4):

505 (A) except as otherwise provided in paragraph (7), the second trust may be a nongrantor  
506 trust, even if the first trust is a grantor trust; and

507 (B) except as otherwise provided in paragraph (10), the second trust may be a grantor  
508 trust, even if the first trust is a nongrantor trust.

509 (10) An authorized fiduciary may not exercise the decanting power if a settlor objects in a  
510 signed record delivered to the fiduciary within the notice period and:

511 (A) the first trust and a second trust are both grantor trusts, in whole or in part, the first  
512 trust grants the settlor or another person the power to cause the first trust to cease to be a grantor  
513 trust, and the second trust does not grant an equivalent power to the settlor or other person; or

514 (B) the first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in  
515 part, with respect to the settlor, unless: (i) the settlor has the power at all times to cause the  
516 second trust to cease to be a grantor trust; or (ii) the first-trust instrument contains a provision  
517 granting the settlor or another person a power that would cause the first trust to cease to be a  
518 grantor trust and the second-trust instrument contains the same provision.

519 Section 920. Duration of second trust

520 (a) Subject to subsection (b), a second trust may have a duration that is the same as or  
521 different from the duration of the first trust.

522 (b) To the extent that property of a second trust is attributable to property of the first trust,  
523 the property of the second trust is subject to any rules governing maximum perpetuity,  
524 accumulation, or suspension of the power of alienation which apply to property of the first trust.

525 Section 921. Need to distribute not required

526 An authorized fiduciary may exercise the decanting power whether or not under the first  
527 trust's discretionary distribution standard the fiduciary would have made or could have been  
528 compelled to make a discretionary distribution of principal at the time of the exercise.

529 Section 922. Saving provision

530 (a) If exercise of the decanting power would be effective under this article except that the  
531 second-trust instrument in part does not comply with this article, the exercise of the power is  
532 effective, and the following rules apply with respect to the principal of the second trust  
533 attributable to the exercise of the power:

534 (1) A provision in the second-trust instrument which is not permitted under this article is  
535 void to the extent necessary to comply with this article.

536 (2) A provision required by this article to be in the second-trust instrument which is not  
537 contained in the instrument is deemed to be included in the instrument to the extent necessary to  
538 comply with this article.

539 (b) If a trustee or other fiduciary of a second trust determines that subsection (a) applies  
540 to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent  
541 with the fiduciary’s duties.

542 Section 923. Trust for care of an animal

543 (a) In this section:

544 (1) “Animal trust” means a trust or an interest in a trust described in section 408.

545 (2) “Protector” means the person who may enforce the intended use of the principal or  
546 income of an animal trust under subsection (f) of section 408.

547 (b) The decanting power may be exercised over an animal trust that has a protector to the  
548 extent the trust could be decanted under this article if each animal that benefits from the trust  
549 were an individual, if the protector consents in a signed record to the exercise of the power.

550 (c) A protector for an animal has the rights under this article of a qualified beneficiary.

551 (d) Notwithstanding any other provision of this article, if a first trust is an animal trust, in  
552 an exercise of the decanting power, the second trust must provide that trust property may be  
553 applied only to its intended purpose for the period the first trust benefitted the animal.

554 Section 924. Terms of second trust

555 A reference in this chapter to a trust instrument or terms of the trust includes a second-  
556 trust instrument and the terms of the second trust.

557 Section 925. Settlor

558 (a) For purposes of law of the commonwealth other than this article and subject to  
559 subsection (b), a settlor of a first trust is deemed to be the settlor of the second trust with respect  
560 to the portion of the principal of the first trust subject to the exercise of the decanting power.

561 (b) In determining settlor intent with respect to a second trust, the intent of a settlor of the  
562 first trust, a settlor of the second trust, and the authorized fiduciary may be considered.

563 Section 926. Later-discovered and later-acquired property

564 (a) Except as otherwise provided in subsection (c), if exercise of the decanting power was  
565 intended to distribute all the principal of the first trust to one or more second trusts, later-  
566 discovered property belonging to the first trust and property paid to or acquired by the first trust  
567 after the exercise of the power is part of the trust estate of the second trust or trusts.

568 (b) Except as otherwise provided in subsection (c), if exercise of the decanting power was  
569 intended to distribute less than all the principal of the first trust to one or more second trusts,  
570 later-discovered property belonging to the first trust or property paid to or acquired by the first  
571 trust after exercise of the power remains part of the trust estate of the first trust.

572 (c) An authorized fiduciary may provide in an exercise of the decanting power or by the  
573 terms of a second trust for disposition of later-discovered property belonging to the first trust or  
574 property paid to or acquired by the first trust after exercise of the power.

575 Section 927. Obligations

576 A debt, liability, or other obligation enforceable against property of a first trust is  
577 enforceable to the same extent against the property when held by the second trust after exercise  
578 of the decanting power.

SECTION 4. This act shall take effect on January 1, 2026.